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September 22, 2003

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte***
CC Docket No 01-338

Dear Ms. Dortch:

For the reasons stated in this letter, the Commission should rescind in principal part the *Errata*¹ issued in this proceeding and terminate any consideration of a *sua sponte* reconsideration concerning fiber-to-the-home ("FTTH") policies.

In the *Errata*, the Commission, among other changes, substituted "end user customer premises" for "residential" in its rules defining the limitations on ILEC unbundling obligations for FTTH.² The effects of this change are first to introduce considerable ambiguity into the application of that rule since the "home" aspect of FTTH would appear almost by definition to limit it to residential applications in any event, but more likely to potentially expand the scope of the FTTH limitation to some business customers. Given the clear previous limitation to "residential," the import and possible impact of the change could not be more significant for competitive local exchange carriers ("CLECs") serving the business market. In particular, CLECs serving the small and medium-sized business market could be significantly impacted because there is no economically feasible way for CLECs serving that market to extend fiber to customer premises. Instead of being assured that the FTTH policy is limited to the residential market, CLECs must now be concerned that, in fact, that policy may extend to some extent to business customers, potentially even some current business customers served by the redefined FTTH.

We are concerned that the Commission may also be considering even broader changes as a *sua sponte* reconsideration. In particular, the Commission is reportedly considering expanding the scope of its FTTH policy to a category of hybrid loops, *i.e.* fiber-to-the-curb ("FTTC").

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Errata, CC Docket No. 01-338, FCC 03-227, released September 17, 2003.

² *Errata*, paras. 37, and 38.

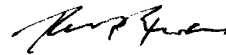
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This, combined with the possible application of that policy to some categories of business customers is of great concern to the undersigned CLECs.

We strongly object to the Commission making major substantive changes to its *Triennial Review Order* rules by a process other than through normal reconsideration. The "errata" concerning FTTH was not a correction, or even a clarification, of anything in the text or the rules but is a significant substantive change, if it has any meaning at all. Nor did the "errata" approach provide an opportunity for comment on the record, or apparently an opportunity for vote and separate statements by the commissioners. Nor did this permit the Commission to explain the change, which at a minimum creates significant uncertainty that is damaging to CLECs.

Although the undersigned CLECs reserve their rights with respect to appeal, rather than reconsideration, of any aspect of the *Triennial Review Order*, the Commission may not at this point proceed with any *sua sponte* reconsideration concerning FTTH, FTTC or fiber deployment. Rather, the Commission may not consider any such changes until, through formal reconsideration procedures, all positions have been disclosed on the record and interested parties have had an opportunity to comment. The Commission should also rescind in significant part the *Errata*.

Sincerely,



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Dated: September 22, 2003

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